

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Patent Application No. 10/623,316

Confirmation No. 3437

Applicant: Robert W. Childers

Filed: July 17, 2003

TC/AU: 3761

Examiner: Chapman, Ginger T.

Customer No.: 23460

**CERTIFICATE OF SERVICE UPON THE APPLICANT FOR A
THIRD-PARTY SUBMISSION IN PUBLISHED APPLICATION**

I am attorney licensed to practice in the State of Illinois and registered to practice before the United States Patent And Trademark Office (USPTO) and hereby certify, pursuant to 37 CFR 1.248, that on this Fifth Day of November 2008 I have:

1. Filed with the USPTO the attached:

- a. Third-Party Submission In Published Application Under 37 CFR § 1.99,
- b. Form 1449,
- c. U.S. Patent No. 6,042,784,
- d. this CERTIFICATE OF SERVICE;

2. Caused to be served by first class mail true copies of the filing papers listed in (1) upon:

David W. Okey
Bell, Boyd & Lloyd LLP
70 West Madison Street
Chicago, IL 60712;

3. Under penalty of perjury under the laws of the United States and Rules of the USPTO that the foregoing is true and correct.



Peter H. Domer, Reg. No. 60,072
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Date: November 5, 2008

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Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

THIRD-PARTY SUBMISSION IN PUBLISHED APPLICATION

Pursuant to 37 CFR § 1.99, the reference listed on the enclosed Form PTO-1449 is submitted for consideration by the Examiner in the examination of the above-identified patent application.

The above-identified patent application published on January 29, 2004, and, therefore, this submission is not formally "within two months from the date of publication of the application... or prior to the mailing of a notice of allowance..., whichever is earlier" as provided by 37 C.F.R. § 1.99(e). However, the MPEP allows for:

[a]ny submission not filed within the time period specified in 37 CFR 1.99(e) is permitted only when the patents or publications could not have been submitted to the Office earlier (e.g., an amendment submitted in the application after publication changes the scope of the claims to an extent that could not reasonably have been anticipated by a person reviewing the published application during the period specified in 37 CFR § 1.99(e)). Submissions after the time period specified in 37 CFR § 1.99(e) must be accompanied by (1) a >satisfactory explanation why< the patents or publications being submitted in the submission could not have been submitted to the Office earlier, and (2) the processing fee as set forth in 37 CFR § 1.17(i).

MPEP § 1134.01(I).

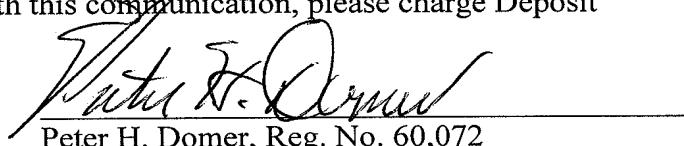
We submit that the explanation of why claim 15 contains allowable subject matter in the Office Action of August 19, 2008, is tantamount to an "an amendment submitted in the application after publication [that] changes the scope of the claims." We submit that third parties could not have reasonably appreciated the full relevance of the United States patent 6,042,784 ("the '784 patent") on reviewing the published application during the period

specified in 37 CFR § 1.99(e). Thus, we request that the Examiner enter and consider the '784 patent.

Further, it is respectfully requested that the reference be entered into the record of the present application and that the Examiner initial the appropriate area on the enclosed Form 1449, thereby indicating the Examiner's consideration of the reference.

A copy of the '784 patent listed on the enclosed Form 1449 are enclosed herewith.

Charge Deposit Account No. 23460 the amount of \$130.00 (37 CFR 1.17(i)). If any additional fees are owed in connection with this communication, please charge Deposit Account No. 23460.



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